

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Recreation Commission : Request Received May 19, 2011
: :
: Advisory Opinion No. 25

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

By letter dated May 19, 2011 the President of City Council, Vaughn D. Spencer, (“Mr. Spencer”) requested that the City of Reading Charter Board (“Board”) issue an advisory opinion regarding the establishment of a Recreation Commission (“Commission”) between the City of Reading and the Reading School District. Mr. Spencer supplied the Board with draft agreement between those two entities. It is proposed that the Commission have representatives from City Council, the Mayor’s staff, public appointees, members of the Reading School Board, and the school district’s superintendant’s staff.

Mr. Spencer asks whether Charter Section 1002(a) permits members of City Council to concurrently serve as members of the Commission. The Board answers as set forth below.

II. DISCUSSION AND ANALYSIS

A. Governing Law and Pertinent Charter Provisions

In examining the membership and other elements of any board or commission, the Board’s initial inquiry must be whether the entity is governed by the Charter or by other superseding law, such as the Urban Redevelopment Law.¹ 35 P.S. §§1701, *et seq.*, or Municipal Authorities Act,² 53 Pa.C.S. § 5061, *et seq.* If it is governed by other law, then the membership and other requirements of that enabling act control, and possible Charter restrictions under Charter Article X are inapplicable.

¹ Advisory Opinion No. 9 (April 3, 2008) at p. 4.

² Advisory Opinion No. 4 (December 4, 2006) at pp. 2-3.

If the board or commission in question is not governed by other law, then the analysis proceeds and a determination is made whether the entity is of the kind intended to be covered by Article X of the Charter. Specifically, a four part test, spelled out in Advisory Opinion No. 14, is applied to determine if the entity is an Article X board or commission, such that the membership requirements of Charter § 1002 apply.³

B. Analysis

Regarding the Recreation Commission, it appears that the Intergovernmental Cooperation Act, 53 Pa.C.S. § 2301, *et seq.*, specifically provides for this type of cooperation between two governmental entities. This is a statute of uniform, statewide application, and as such the Charter may not be “contrary to, or in limitation or enlargement of,” the statute’s subject matter, i.e., intergovernmental cooperation. 53 Pa.C.S. § 2962(c)(2).⁴ The Intergovernmental Cooperation Act, then, is the governing law for the Recreation Commission, and the Charter restrictions of Article X, as to that commission’s membership or composition, are inapplicable. Specifically, Charter § 1002(a), which mandates that no elected City official may serve on any board or commission, does not apply to the Recreation Commission.

³ Article X boards and commissions have the following defining Characteristics:

- i) They are citizen entities, that is, they are composed of non-elected individuals who are not City employees. Charter §§ 1001(a)(i) and 1002(a).
- ii) They are established by ordinance, with a clear statement of the scope of their powers. Charter § 1001(a)(i).
- iii) They are established to carry out a specific aspect of City government, that is, they are delegated authority by City Council to execute or administer City business within clearly delineated channels of accountability. Charter § 1001(a)(i).
- iv) They are established entities that have an ongoing existence until such time as they are abolished or dissolved by ordinance. They are not entities, in the nature of a task force, which expire of their own accord once their mission is accomplished. Charter § 1001(a)(i), (ii).

Advisory Opinion No. 14 (May 2009) at pp. 5-6.

⁴ Although Home Rule municipalities are given a relatively wide grant of powers under the Home Rule and Optional Plans Law, Section 2961, there are numerous limitations imposed by Section 2962. One of these is that:

“A [Home Rule] municipality shall not . . .

(2) Exercise powers contrary to, or in limitation or enlargement of, powers granted by statutes which are applicable in every part of this Commonwealth.”

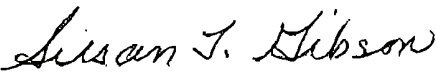
53 Pa.C.S. § 2962(c)(2).

Inasmuch as the Recreation Commission is governed by law other than the Charter, it is not necessary to determine, through the 4-part test of Advisory Opinion No. 14, whether it would be an Article X board or commission.

III. OPINION OF THE BOARD

The Opinion of the Board is that the proposed composition of the Recreation Commission does not violate Article X of the Charter and that, as asked by Mr. Spencer, members of City Council may concurrently serve as members of the Recreation Commission.

CITY OF READING CHARTER BOARD

By: 
Susan Gibson, Chair

Date: June 20, 2011